

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION

Plaintiff,

v.

ERIC JAEGER and
JERRY A. SHANAHAN,

Defendants

Civ. No. 01:07-00039-SM

**SECURITIES AND EXCHANGE COMMISSIONS STATEMENT OF
UNDISPUTED FACTS IN RESPONSE AND REPLY TO SHANAHAN'S
MOTION FOR SUMMARY JUDGMENT**

The Securities and Exchange Commission (“SEC”) submits the following Response to Statement of Undisputed Facts (“RSUF”) in Reply to Shanahan’s Response to the SEC’s Motion for Summary Judgment and in Response to Shanahan’s Motion for Summary Judgment on the Tech Data Canada and Accton transactions.

Tech Data Canada

1. The SEC incorporates herein Shanahan’s Statement of Undisputed Facts (“SUF”) and the SEC’s Response to the SUF, filed herewith.
2. On August 27, 2001 Joe Garofolo (“Garofolo”) told Bruce Kay (“Kay”), with a copy to Shanahan, that Enterasys was changing the August 23, 2001 letter from Garofolo to Tech Data Canada. RSUF 1.
3. Attached hereto as Ex. RSUF 2, is an enlarged copy of page KPMG 321132 of Shanahan’s SUF 46.

Accton

4. Shanahan sent the email with literature to Gary Workman (“Workman”) on May 31, 2001. RSUF Ex. 3.
5. Workman forwarded the email to Enterasys employees in the Asia Pacific region, Alvin Heng and David Boey. RSUF Ex. 4.
6. Workman also forwarded the product literature to A.J. Huang of Accton. RSUF Ex. 5.
7. Huang turned around and sent the invoice back to Shanahan as a purchase order stating: “we will work out payment terms and condition later.” RSUF Ex. 5.
8. Shanahan responded to Huang immediately stating: “This is not a PO that we can process. I need you to give us a PO from your system. RSUF Ex. 5.

9. Accton was buying Aprisma product but Shanahan had them make the order out to Enterasys. RSUF Ex. 5.
10. Shanahan had multiple emails with Huang about the purchase order. Shanahan told Huang that the purchase order had been improperly drafted to Aprisma and they sent him a purchase order to Enterasys. Shanahan asked Huang to state: “that he had accidentally placed the PO with Aprisma, in error, and that his relationship was with Enterasys and so that is where he wanted the PO placed.” RSUF Ex. 6.
11. Amber, of Accton, revised the PO per Shanahan’s request. RSUF Ex. 7.
12. Huang of Accton stated that he wanted confirmation of the payment terms because he was “worry about Gary’s involvement.” RSUF Ex. 8.

Respectfully submitted this 20th day of January, 2012.

s/Nancy J. Gegenheimer
Securities and Exchange
Commission
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CERTIFICATE OF SERVICE

I certify that on January 20, 2012, I sent a true copy of the foregoing pleading by electronically mailing it through the ECF system to the following persons:

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